

List of BDCP Issues for Discussion

January 21, 2010

Schedule for the Draft BDCP – is this realistic?

To meet the December 15 deadline, a number of outstanding BDCP issues still need to be decided by January 29: long-term operations criteria, near-term water operations, intake locations, measures to address other stressors, and restoration opportunities.

- PRE proposal for early long-term operations criteria – How do we address potential deficiencies?
 - Lack of a San Joaquin E/I ratio
 - Lack of fall action
- What can we expect for near-term operations (see list of issues below)?
- What have we learned from the mini-effects analysis?
- Progress on water operations negotiations has been slow and it has been suggested that outstanding issues can be resolved later through decisions on adaptive management and governance. However, leaving these decisions until later could limit our options to fully negotiate solutions.
- Decisions on north delta intake locations were made with little biological input from the agencies. Issues about impacts to salmonids need to be resolved before locations can be finalized. Changes in the location of intakes could impact the water operations negotiations.
- A number of the other stressor conservation measures proposed have little conservation benefit or assurance of occurring. The Fish and Wildlife Agencies have expressed concerns about these measures over the past year, and have worked extensively with technical groups to seek resolutions. However, any progress made in negotiations with technical groups has been reversed by the PREs at Steering Committee.
- Progress has been made toward identifying restoration opportunities but preliminary effects analysis has been unclear on what fisheries benefits could result. Because it has been proposed that restoration could offset impacts from increased water diversions, potential benefits will need to be determined so that water operations negotiations can be finalized by January 29.

Water Supply Expectations – need to resolve water operations criteria for near-term

- Need to assess what interim or near-term actions may be needed while the long-term solution is being developed
- Due to delta conditions and very low fish populations levels, an approved HCP likely cannot immediately result in increased water supply
- It is likely that continuation of RPA will be needed until conservation measures result in changed environmental conditions
- Are there other ways to operate the system for the years prior to the construction of the North of Delta Diversions that provide equal conservation and more water supply than currently available?
- How do you reconcile these negotiations with other forums asking the same or similar questions – NAS review, OCAP litigation, State Water Resources Control Board flow recommendations?
- Can these criteria be determined by January 29 – the date required to finalize operations such that the EIS/EIR can be completed by December 15, 2010?
- Is the treatment of federal activities which will be covered under Section 7 appropriately included in the Section 10 Plan?
- For instance, is it appropriate to include Reclamation's actions which will be the subject of Section 7 consultation in a chapter of the HCP entitled "Covered Activities"? This seems misleading.

Schedule for the Draft EIS/EIR – can we commit?

- If the BDCP issues were resolved, a compressed EIS/EIR schedule would be required which includes "live editing"
- Current staffing levels are not adequate to fully participate in live editing

The Federal lead agencies role in the process will need to be strengthened – need the "three-party agreement" completed so that BOR, FWS and NMFS have equal standing with DWR in EIS/EIR decision making and consultant team oversight

- Need to establish cooperating agency status for PREs and other interested parties so it is clear their role is to provide technical advice and not to lead the process and decision making.

- Completing the EIS/EIR by December 15th limits the number of modeling runs that could be conducted and that could constrain the ability to analyze a full range of alternatives
- Greater coordination between federal projects is needed to ensure a defensible cumulative effects analysis, but the schedule and limits on modeling runs could impact the ability to do that analysis
- The schedule is contingent on a number of BDCP decisions and external factors (NAS review and litigation). If complications arise, it will be impossible to further compress the schedule to meet the December 15 deadline. All involved parties need to commit to extending the deadline if delays occur for any reason.

Relationship to state legislature activities

- Does federal government intend to engage with the Delta Stewardship Council, preparation of a Delta plan or other activities called for in state legislation? If so how do we envision that involvement occurring-connection with BDCP?

As the State administration changes, what is Interior's leadership role in the continuation of the BDCP?

- Who is/are the leader(s) of the effort?
- Where do we provide that leadership? – BDCP or DHCCP or both?
- In what capacity do we provide that leadership?

What is Interior's role in the 50-year implementation of the BDCP?

- Does Reclamation have a role in the construction and operation of new facilities?
- What is the Federal role in Governance?
- Does operational control extend to the entire CVP and SWP? If not, how are operations coordinated?
- How do the new facilities and operations impact the COA and CVP-SWP operations overall?

- Do we help fund and implement the plan?
- Does the FWS assist with land acquisition and management through the National Wildlife Refuge System?
- How do we develop the scientific capacity to make good decisions?
 - How can we truly launch the adaptive science based program envisioned in the NMFS BO?
 - For BDCP, can the federal agencies take more of a leadership role on science? We need to take a big step up forward.
- Is the administration willing to support legislation to allow for clarification of the federal role in governance/long term implementation?

Who are the Section 10 Incidental Take Permit (ITP) applicants?

- DWR clearly is an applicant
- Are the PREs (water contractors) applicants? If they are, what is their role in Governance?

What assurances can be provided under the “No Surprises Policy”?

- Many of the activities to be covered by the ITP are shared by DWR and Reclamation (i.e. coordinated operations of the CVP-SWP)
- Because any action would have the potential for reinitiation of consultation under section 7 (for the federal component/participation), what assurances could be given to DWR?
- If the PREs are applicants, can they receive No Surprises Assurances? Are the assurances different for CVP contractors versus SWP Contractors?